IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1182 OF 1998

The State of Maharashtra ..Appellants

versus

Abhimanyu Naganath Dalave ..Respondent

Mr. B. R. Patil, AGP for the Appellants - State.

None for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 7TH MARCH,2005

ORAL ORDER :

1. Heard learned AGP for the Appellants _ State, who has challenged the order of the Reference Court i.e. IIIrd Joint Civil Judge, Senior Division, Solapur dated 25.4.1995 enhancing compensation in the land acquisition reference. Nobody is present for the respondent though served.

2. The original claimant - respondent was the owner of Gat No.167 of Village Ambegaon, Tal. Barshi, Dist: Solapur, from which 3 H 73 R, from Gat No. 152 of Village Bhandegaon 1 H 20 R and from Gat No. 154 1 Hectare land including trees, Well,

Tals etc. was acquired by the State for Javalgaon Medium Project and Sumbergence. The notification under Section 4 was issued in the month of January 1980. The Award came to be passed on 11.9.1980 and the SLAO awarded compensation at Rs.6,000/- per hectare. Being dissatisfied by the same, the claimant - respondent filed Reference. Reference Court after considering the relevant provisions and the Case laws relied upon by the claimant - respondent, discussed factual aspect of the matter in paragraph 14 and it came to the conclusion that Gat No. 167 is bagayat land irrigated by well water and two wells were situated in the said land. There were 7 x 12 extract at Exhibit 18 where it was mentioned that crops like sugarcane, ground nut, sunflower etc. were cultivated by the claimant - respondent since 1977-78 till 1987-88. The same was the position of Gat Nos. 152 and 154. Their crop statement and 7 x 12 extract at Exhibits 10 and 17 showed that sugarcane and other Bagayat crops were raised. Further the court found from the evidence that there were two wells 45 ft. x 45 ft. in length, 30 ft. x 30 ft. breadth and 40 ft. deep. There is mention that 1076 fruit of grape trees of three years old were there in gat No. 167 when the Award was prepared.

3. Therefore the Court concluded that the

market value of the land could be Rs.40,000/- per hectare. Further awarded Rs.25,000/- for the trees which were 22 mango trees, 19 lemon trees, 3 Jamun trees, 6 Guava, 5 Ramphal etc. Those details of the trees were not there in 7 x 12 extract but there was mention about them in the award. There is also mention of about 1076 grape trees.

4. According to the claimant - respondent there were two cattle shades constructed in cement and mud and there were water tank. Court found corroboration to the same in the award page Nos. 474 and court awarded Rs.20,000/- as compensation. For the two wells, the court also awarded Rs.10,000/- each in Gat No.167 of Village Ambegaon and Rs.3,000/- towards well in Gat No. 152 of Village Bhandegaon. For 5 tals in Gat No. 167 the court awarded compensation at Rs.3,000/- and same compensation for the Tals in Gat no. 157. The court also awarded Rs.10,000/- for loss of iron angles and wires irrigated in grape garden. It is this order which is challenged by the State in the present Appeal.

5. Learned AGP contended that the award of compensation by the court on different counts at enhanced rate, was not at all justified because there was no evidence of the claimant in that

regard. He also contended that since the entire village of Ambegaon was acquired for the purpose of Javalgaon Medium Project and Sumbergence, there was not a single sale instance available to determine the market value and therefore SLAO was justified in considering the sale instances of the lands situated in the neighbouring villages while determining the market value. He further contended that fixing price of the land at Rs.40,000/- per hectare was also, without any basis.

6. Claimant - respondent had examined himself to prove his claim. He has given oral evidence about his contention and different claims under different Heads. He has stated that compensation of Rs.6,000/- per hectare awarded by the SLAO was not adequate. According to him prevailing market price of the land was Rs.20,000/- to Rs.25,000/- and therefore he was entitled for enhancement. The claimant was cross-examined on behalf of the State. Suggestions were put to him that he did not inform the SLAO about the description of the well, number of fruit bearing trees, cattle shades, tals etc. while raising objection, but he denied those suggestions. He admitted that he did not produce any documentary evidence before the SLAO about the expenses incurred about construction of bandhs, structures, klien, cattle shades, wells etc. while

raising objection. He admitted that he has not taken any help from any Expert to demand cost of different structures but he had not shown the opinion of the SLAO before acquisition. He admitted that he had not informed the SLAO about the cost of klein or about yield from fruit bearing trees or the age of the trees. He admitted that there was no sale deeds executed in Villages Ambegaon and Bhandegaon where the lands were acquired and there was no sale took place between the year 1980 to 1987 in the entire villages. He also admitted that he has not informed the SLAO about the annual income from the land.

7. From this evidence, the learned AGP contended that the claim of the appellant, firstly, is an after thought, and, secondly it is not supported by any document.

8. A perusal of the documentary evidence produced by the claimant - respondent to show that he is granted permission to instal 10 HP motor pump in his field. In Survey No. 152, he was raising crops like Javari, Bohimung, in Survey No. 154 similar type of crops Javari, Sugarcane, Bohimung, in Survey No. 167 he is raising Javari, Wheat along with vegetables. Then he has produced bills for payment of electric charges from Exhibits 19, 20, 21

and his bills for sale of sugarcane to Sahakari Sakhar Karkhana.

9. It appears that claimant tried to rely upon deposition of three witnesses by filing certified copies of their depositions on record. Filing certified copies of the evidence of witnesses in other case is not a proper method of proving facts. Statement of witnesses given in the earlier case may be admissible if the witness is not alive or is dead, or if he not available and even in that case he is to be made available for cross-examination. There is nothing on record to show any of the circumstances and therefore those statements or certified copies of the evidence of witnesses in another case, are of no use.

10. It is an admitted fact that so far as these two villages are concerned, there was no sale transactions or instances about 6- 7 years preceding the date of notification under Section 4. Therefore the SLAO classified the land and then fixed the compensation. In paragraph 9 of the judgment, the trial court has referred to 8 sale instances, upon which the claimant placed reliance, they are from different villages or adjoining villages. Counsel for the claimant contended that these sales instances were considered by the SLAO but the SLAO

did not accept the market price which was higher than the one awarded by him. The Court has observed that applicant has produced the sale instances of near about villages Jawalgaon, Vairag etc. But even though I have gone through the evidence of the claimant, I do not find anything any where in that regard. What the claimant has stated as under:

> **"There was sale transactions took place in the Village Jawalgaon, Village Rui, Village Dandgaon, Shelgaon etc at the time of acquisition. The certified copy of the said sale instances have been filed in LAQ 485 of 1989."**

This is not the proper method of proving sale instances. If the claimant wanted to rely upon those sale instances, it was his duty to file copies of those sale instances. Merely contending that those certified copies have been filed in another LAR, was not at all sufficient and therefore no reliance can be placed on those sale instances. LAR 485 of 1989 is not shown to have any connection with the present acquisition proceedings nor it is a part of the present proceedings. The trial court appears to have accepted this contention of the claimant fully as is clear from paragraph 13 and then it is stated by the trial court as under:

> **"It may be noted from the above mentioned sale instances in tabulate form that the value of the Bagayat land on the well water was near about in between sum of Rs.40,000/- to Rs.50,000/- per hector. More particularly it is seen from the said sale instances at Exh. 31 dated 20th January 1981 of land of Vairag sold out @ Rs.54,545/- per hectare....."**

(This Exhibit 31 dated 20.1.1981 is not at all forming part of the Reference in question). Then Exhibit 26 dated 21.7.1973 was about Rs.19,230/- per hectare and then concluded that under the circumstances after considering day to day increase of the price the value of Jirayat land comes to Rs.25,000/- and if Rs.3,000/- per year is taken as increase then value of the Bagayat land coems to Rs.40,000/- per hectare i.e. 1.5 times more than the jirayat land. This conclusion is absolutely without any basis, admittedly in his deposition the claimant has not relied upon any specific sale deed. In the Reference he has not filed copy of any sale deed. He has referred to some other reference and copies filed therein without caring to file any documentary evidence in the Reference in question.

Reference by the Reference Court to Exhibits in paragraph 13 appears to be a reference to some other documents not forming part of this Reference and therefore the ultimate conclusion of fixing Rs.40,000/- per hectare is all imaginary and baseless. Therefore contention of the learned AGP that this is a case of extremely enhanced compensation, has to be accepted. In any case when the SLAO has awarded Rs.6,000/- per hectare on the basis of the classification of lands, grant of Rs.40,000/- per hectare was not at all justified. Rs.20,000/- per hectare appears to be just and proper compensation. Even if it is taken that Rs.6,000/- per hectare is awarded for Jirayat land, is not proper,. Rs.10,000/- for Jirayat land can be taken and double amount of that comes to Rs.20,000/- for irrigated land.

11. Regarding the compensation awarded by the Reference Court under different heads, viz. for well, tal, trees, it is oral evidence of the applicant that is without any documentary support. He has not produced any document as to how much he spent for well, trees, cattle sheds, tals etc. He has not examined any expert about the valuation. He has closed his case as it is seen from the record after his own evidence. Pursis came to be filed on his behalf on 20.3.1995 i.e. two days after the

examination of the calimant was over.

12. It may be that there were wells in the field or kliens or sheds but unless the basis is made by the claimant on the strength of documents about the value of those wells, klins, sheds or about the expenses incurred by him, the court was not justified in awarding him whatever was asked by him. Compensation awarded therefore on each count is therefore required to be reduced. I therefore pass the following order :

ORDER

. Appeal is partly allowed.

. Order of the Reference Court is modified as under:

. Claimant will be entitled to get compensation at the rate of Rs.20,000/- per hectare for the acquired land.

. Claimant will be entitled to get Rs.7,000/- each for the two wells.

. In Gat No. 167 of Village Ambegaon he will get Rs.10,000/- for construction of chulwan, two

cattle shade, jaggery etc.

. Total compensation of Rs.15,000/- for all trees or grape trees.

. Compensation of Rs.5,000/- for the loss of iron angles and wires irrigated in grape garden.

. Rs.2,000/- for tals in gat No.167 and Rs.2,000/- for tals in Gat No. 157.

. Compensation awarded to the claimant will stand reduced in the aforesaid manner and with proportionate reduction of solatium and interest.

. Since the respondent is absent, there will be no order as to costs.

7.03.2005 (D.G. DESHPANDE, J.)